
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

**The Insolvency (EU Exit) (Scotland)
(Amendment) Regulations 2019**

PART 1

Amendments to primary legislation

Amendment of the Insolvency Act 1986

- 2.—(1) The Insolvency Act 1986⁽¹⁾ is amended as follows.
- (2) In section 51 (power to appoint receiver)—
- (a) in subsection (1)(b) omit “other than the United Kingdom”, and
 - (b) in subsection (6) at the end of the definition of “the EU Regulation” insert “as that Regulation has effect in the law of the European Union”.

Amendment of the Bankruptcy and Diligence etc. (Scotland) Act 2007

- 3.—(1) The Bankruptcy and Diligence etc. (Scotland) Act 2007⁽²⁾ is amended as follows.
- (2) In section 45 (effect of floating charge on winding up)—
- (a) omit subsection (2),
 - (b) in subsection (7)—
 - (i) omit paragraph (a), and
 - (ii) in paragraph (b), omit “in any other case,”, and
 - (c) omit subsection (8).

Amendment of the Bankruptcy (Scotland) Act 2016

- 4.—(1) The Bankruptcy (Scotland) Act 2016⁽³⁾ is amended as follows.
- (2) In section 2 (sequestration of estate of living debtor) omit subsection (1)(b)(ii) and (iii).
- (3) In section 5 (sequestration of estate of deceased debtor) omit paragraphs (c) and (d).
- (4) In section 6 (sequestration of other estates) omit subsections (3)(b)(i) and (ii), (4)(c)(i) and (ii) and (7)(b)(i) and (ii).
- (5) In section 11 (debtor application: provision of information)—
- (a) in subsection (1)(a), for “another member State” substitute “a member State (other than Denmark)”,
 - (b) for subsection (1)(b) substitute—

(1) 1986 c.45. Relevant amendments have been made by [S.S.I. 2011/140](#) and [S.S.I. 2017/210](#).

(2) 2007 asp 3. Section 45 is not yet in force.

(3) 2016 asp 21. Relevant amendments have been made by [S.S.I. 2017/210](#).

- “(b) if the debtor’s centre of main interests is situated in a member State (other than Denmark), whether or not the debtor possesses an establishment in the United Kingdom.”,
 - (c) in subsection (2)(a), for “another member State” substitute “a member State (other than Denmark)”,
 - (d) for subsection (2)(b) substitute—
 - “(b) if the debtor’s centre of main interests was situated in a member State (other than Denmark), whether or not the debtor possessed an establishment in the United Kingdom.”, and
 - (e) omit subsection (3).
- (6) In section 12 (petition for sequestration of estate: provision of information)—
 - (a) in subsection (1)(a), for “another member State” substitute “a member State (other than Denmark)”,
 - (b) for subsection (1)(b) substitute—
 - “(b) if the debtor’s centre of main interests is situated in a member State (other than Denmark), whether or not the debtor possesses an establishment in the United Kingdom.”, and
 - (c) omit subsection (2).
- (7) In section 13 (further provisions relating to presentation of petitions)—
 - (a) in subsection (2), omit paragraph (b)(ii) and (iii),
 - (b) in subsection (3), omit paragraph (b)(ii) and (iii), and
 - (c) in subsection (4)—
 - (i) after paragraph (b)(i), insert “or”, and
 - (ii) omit paragraph (b)(iii) and (iv).
- (8) Omit sections 14A and 14B(4).
- (9) In section 15 (jurisdiction) omit subsection (9).
- (10) In section 16 (meaning of “apparent insolvency”) omit subsections (1)(d) and (7)(c).
- (11) In section 79(2) (provision supplementary to section 78 and interpretation of Part 5) omit the words “and to section 231”.
- (12) In section 128 (voting and drawing a dividend) omit subsections (4) to (7).
- (13) In section 129 (priority in distribution) omit subsection (8).
- (14) In section 170 (protected trust deeds - documents to be sent to creditors) omit subsection (1)(d)(v).
- (15) Omit sections 190 to 192, 207, 208 and 226.
- (16) In section 228(1) (interpretation)—
 - (a) omit the following definitions—
 - (i) “creditor”,
 - (ii) “main proceedings”,
 - (iii) “member State insolvency practitioner”(5),

(4) Sections 14A and 14B were inserted by regulation 4(8) of the Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/210).

(5) The definition of “member State insolvency practitioner” was inserted by regulation 4(21)(g) of S.S.I. 2017/210.

- (iv) “secondary proceedings”(6),
- (v) “temporary administrator”, and
- (vi) “territorial proceedings”, and
- (b) in the definition of “the EU insolvency proceedings regulation” at the end insert “as it forms part of domestic law on and after exit day”.
- (17) Omit section 231 (proceedings under EU insolvency proceedings regulation: modified definition of estate).
- (18) In schedule 5 (information to be included in the sederunt book) omit paragraph 3A(7).

(6) The definition of “secondary proceedings” was inserted by regulation 4(21)(h) of [S.S.I. 2017/210](#).

(7) Paragraph 3A was inserted by regulation 4(24) of [S.S.I. 2017/210](#).